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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

JILL S. KAMEN,

Petitioner,

vs.

KEMPER FINANCIAL SERVICES, INC. and
CASH EQUIVALENT FUND, INC.,

Respondents.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION FOR DAMAGES AND COSTS
PURSUANT TO RULE 42.2

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Jill S. Kamen

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Respondent's motion for costs is based upon three propositions: (1) the petition for certiorari does not present an issue with any colorable basis; (2) petitioner has filed nine briefs addressing the demand issue and has altered her position; and (3) the present petition is the third petition for certiorari

that petitioner has filed in this action. As a result, respondent has been obliged to respond.

It is true that petitioner has filed three petitions for certiorari in this action. The first petition for certiorari was denied, but Justice White took the unusual step of writing a dissenting opinion from that denial. Kamen v. Nordberg, 485 U.S. 939 (1988). To find that that petition was frivolous (as required by Rule 42) would require a finding that Justice White and such other Justices as may have joined him in voting for certiorari were also guilty of frivolous conduct. Merely to state the proposition refutes it.

The second petition for certiorari was granted. It resulted in the unanimous reversal of the Seventh Circuit's decision. Kamen v. Kemper Financial Services, Inc., 111 S. Ct. 1711 (1991). More need not be said to justify its filing.

It was, of course, the respondent which raised the demand issue and necessitated the extensive briefing. Respondent claims that petitioner has changed position by not arguing before the Court of Appeals that application of a demand requirement is inconsistent with federal policy. That is simply not true. Petitioner's statement to the Court of Appeals pursuant to Circuit Rule 54 expressly asserted, as alleged in the complaint, that "application of a demand requirement would be inconsistent with the federal policy underlying Section 20 of the Investment Company Act." (p. 3).

As to the merit of the petition for certiorari, petitioner respectfully refers the Court to the petition and the reply brief, which reply brief is being or shortly will be filed with this Court. Suffice it to say for present purposes that respondent did not waive its right to file a brief in opposition, but rather filed a nineteen page brief in opposition.

If anything is frivolous, it is the present motion, which should be denied.

Respectfully submitted,



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Attorney for Petitioner
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Dated: November 1, 1991

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CERTIFICATE OF SERVICE

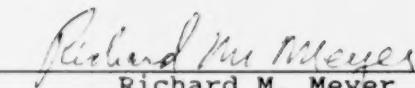
Richard M. Meyer, counsel of record for petitioner Jill S. Kamen, certifies that he caused petitioner Jill S. Kamen's Response to Respondent's Motion For Damages And Costs Pursuant to Rule 42.2 in the above-entitled cause to be served by depositing copies of same in the United States Mail in New York, New York on November 1, 1991, first-class postage prepaid, and addressed to the following counsel:

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All parties required to be served have been served.



Richard M. Meyer